IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10586 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJENDRA DHIRAJLAL GOHEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10586 of 2002

MR IS SUPEHIA for Petitioner No. 1

MR DABHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 22/01/2003

ORAL JUDGEMENT

Rule. Mr.Dabhi, learned AGP waives notice of rule. With the consent of the parties the matter is

taken up for final hearing today.

The short facts of the case are that the father of the petitioner was serving as Head Constable in Police Department and he died on 19-12-1988 while in service. At the time when the father of the petitioner had expired, the petitioner was minor. The wife of the employee, namely, the mother of the petitioner made an application for compassionate appointment in April 1998, on behalf of the petitioner, which came to be rejected on the ground that the application was made after the expiry of the period of five years. The petitioner attained majority on 22-6-1998 and he applied on 21-9-1998 for compassionate appointment. The application of the petitioner is also rejected on the ground that the application is not made within a period of five years by the wife of the deceased for consideration of the case for compassionate appointment of the petitioner.

Mr.Supehia, learned Counsel appearing for the petitioner has placed reliance upon the Circular dated 7-6-2000 issued by the General Administration Department of the State Government providing details of the time limit in the respective categories. It has been submitted that as per the said Circular even if Item No.2 is taken into consideration then also within a period of one year, the application is to be made from attaining the majority, which admittedly has been done by the petitioner herein. Therefore, it has been submitted that the rejection of the application on the ground of time limit is illegal and deserves to be quashed and set aside.

On behalf of the respondent Mr.Dabhi, learned AGP is not in a position to dispute that the Circular dated 7-6-2000, copy whereof is produced at Annexure-H is not in operation.

In above view of the matter, it is apparent from the Resolution/Circular dated 7-6-2000 that the applications made during the period from 12-5-1977 to 30-11-1992 are entertained, if they are made within a period of one year from the date of attaining majority by the minor. Even if the case of the petitioner is considered at par with those employees who died during the said period because the father of the petitioner had expired on 18-12-1988, then also it cannot be said that the application of the petitioner is barred by time limit because the petitioner has attained the majority only on 22-6-1998 and the application is made within a period of three months from the date of attaining majority, which

in any case is within a period of one year. That apart the circular also provides the power for relaxation and therefore, considering both these circumstances when the application of the petitioner was within time limit from the date if counted from the date of attaining majority it could not have been rejected on the ground that the same is not made within a period of five years from the date of death of the employee concerned.

In view of the aforesaid discussion the impugned orders of the respondent at page No. 12 and 13 Annexure D and E, communicating the petitioner for not accepting the application for compassionate appointment on the ground that the application is made beyond the time limit are quashed and set aside. the respondents are directed to consider the application of the petitioner as having been submitted within time limit and to take decision for compassionate appointment in accordance with law. The decision may be taken as early as possible preferably within a period of three months from the date of receipt of this order.

The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

(Jayant Patel, J.)
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